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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 41697, 41698
Plaintiff-Respondent,)	
)	Bannock Co. Case No.
vs.)	CR-2009-14021, CR-2009-3447
)	
TROY GORDON HARRIS,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BANNOCK

HONORABLE DAVID C. NYE
District Judge

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State of Idaho

PAUL R. PANTHER
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DEFENDANT-APPELLANT

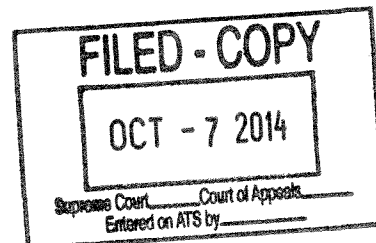


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STATEMENT OF THE CASE

Nature Of The Case

Troy Gordon Harris appeals from the district court's order denying his motions for additional credit for time served. On appeal, he argues that the district court erred by not giving him credit against his sentences in Bannock County for time served in Ada County while awaiting trial on charges arising from Ada County.

Statement Of The Facts And Course Of The Proceedings

Relevant to this appeal, the district court set forth the following factual and procedural background in its Amended Decision on Motion for Credit for Time Served:¹

In Case No. CR-2009-3447-FE, the State filed a Criminal Complaint against Harris on February 24, 2009. Harris had been arrested by the U.S. Marshalls on February 23, 2009. He posted a \$5,000 bond on March 3, 2009, and was released from jail that day. That is 8 days. The probation officer arrested Harris on a probation violation on July 23, 2009 and put him in jail that day. He remained in jail until October 7, 2009, when this Court placed him back on probation. That is 77 days. This Court issued a bench warrant on February 15, 2011, based upon a second probation violation allegation. Harris was served in the Ada County jail with that warrant on November 9, 2011. He posted a bond on the warrant on November 21, 2011. That is 12 days. Harris was once again arrested on August 9, 2012, on a probation violation in this case. He remained in jail until his disposition hearing on November 29, 2012. That is 113 days. Harris has been incarcerated since the November 29, 2012, disposition hearing. From the date of his first arrest in this case until the date of his disposition hearing, Harris spent a total of 210 days incarcerated in this matter.

¹ The district court entered identical amended orders for credit for time served in CR-2009-3447-FE and CR-2009-14021-FE. The order in CR-2009-3447-FE is missing page 3. Because the two cases have been consolidated on appeal, and because the order in CR-2009-14021 is complete, the state cites to it in this brief.

In Case No. CR-2009-14021-FE, the State filed a Criminal Complaint against Harris for failing to register as a sex offender on July 24, 2009. Harris had been arrested by the U.S. Marshalls on July 23, 2009, for failure to register as a sex offender. He remained in jail on this charge until September 30, 2009, when he was sentenced and placed on probation in this case. That is 70 days. This Court issued a bench warrant on February 15, 2011, based upon a probation violation allegation. Harris was served with that warrant on November 9, 2011. He posted a bond on the warrant on November 21, 2011. That is 12 days. Harris was once again arrested on August 9, 2012, on a probation violation in this case. He remained in jail until his disposition hearing on November 29, 2012. That is 113 days. Harris has been incarcerated since the November 29, 2012, disposition hearing. From the date of his first arrest in this case until the date of his disposition hearing, Harris spent a total of 195 days incarcerated in this matter.

(R., pp.184-85.)

In June 2013, Harris filed motions for credit for time served, with accompanying affidavits, in each case (R., pp.29-33, 106-10), and then filed second motions in July (R., pp.40-43, 117-20).² Ruling on those motions, the court ultimately determined that Harris was entitled to 336 days credit for time served in CR-2009-3447-FE and 322 days in CR-2009-14021-FE. (R., pp.183-88.) After the court initially ruled on the motions in September, Harris filed another motion for credit for time served, referencing both cases, in October. (R., pp.168-75.) Ruling on this motion, the district court rejected Harris's request for credit for the time served in Ada County against his Bannock County cases, finding that his Ada County charges—not his Bannock County cases—were the cause of his incarceration. (R., pp.94-98, 190-94.) Harris filed a notice of appeal timely from the district court's final order. (R., pp.196-98.)

² Harris also filed Rule 35 motions for leniency (R., pp.51-57, 128-34), which the district court denied (R., pp.73-78, 148-54).

ISSUE

Harris states the issue on appeal as:

Did the district court err when, applying the wrong statute, it denied Mr. Harris' motions for credit for time served from the date of service of bench warrants for his probation violations?

(Appellant's brief, p.3.)

The state rephrases the issue as:

Has Harris failed to show error in the district court's denial of his request for credit for time served to which he was not entitled?

ARGUMENT

Harris Has Failed To Show Error In The District Court's Denial Of His Request For Credit For Time Served To Which He Was Not Entitled

A. Introduction

While on concurrent periods of probation in Bannock County case nos. CR-2009-3447-FE and CR-2009-14021-FE, Harris was arrested on charges in Ada County on February 3, 2011. (R., pp.46, 123.) Probation violation reports were filed on January 27, 2011 (40665 R.,³ pp.76-80, 151-55) and the district court issued bench warrants on February 15, 2011 (40665 R., pp.93, 167). The district court's file shows that those bench warrants were each served on Harris on November 9, 2011. (Id.; also attached as Appendices A and B, respectively.) The district court awarded credit for time served accordingly. (R., pp.183-88.)

Below, Harris argued that he was entitled to credit for the time he served while in custody in Ada County. (R., pp.29-33, 40-43, 106-10, 117-20, 168-75.) To support his contention, Harris included what he purported was a served bench warrant from February 25, 2011 in CR-2009-14021-FE (R., p.177; also attached as Appendix C) and an affidavit claiming that he would have posted bond in Ada County but for the bench warrants from Bannock County (R., pp.170-75). The district court rejected both arguments, holding that the date of service for the bench warrants was immaterial under Idaho Code § 18-309 and finding that Harris's claim that he would have posted bond

³ In its order consolidating Harris's appeals, the Idaho Supreme Court took judicial notice of the clerk's record in Harris's prior consolidated appeals. Though mislabeled in the Court's order, the context makes it apparent that the Court meant to notice the prior record consolidated under Docket No. 40665.

was not credible in light of the fact that he was eligible for bond in Ada County and did not post bond. (R., pp.94-98, 190-94.)

On appeal, Harris contends that the district court erred by applying the incorrect statute and not giving him additional credit for time served. (Appellant's brief, pp.4-7.) Application of the correct legal standards to the facts found by the district court, however, shows no error in the court's ultimate calculation of credit for time served.

B. Standard Of Review

"The question of whether a sentencing court has properly awarded credit for time served to the facts of a particular case is a question of law, which is subject to free review by the appellate courts." State v. Vasquez, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005) (citation omitted). "We defer to the trial court's findings of fact, however, unless those findings are unsupported by substantial and competent evidence in the record and are therefore clearly erroneous." State v. Covert, 143 Idaho 169, 170, 139 P.3d 771, 772 (Ct. App. 2006).

C. Harris Was Not Entitled To Credit For Time Served In Ada County On Charges Arising From Ada County Against His Sentences In Bannock County

Idaho Code § 19-2602 provides that when a district judge is satisfied that a probationer has violated the terms and conditions of probation, "the court may ... issue a bench warrant for the rearrest of the defendant." Idaho Code § 19-2603 governs credit for time served in relation to the revocation of probation and provides, in pertinent part, that when probation is subsequently revoked,

the original judgment shall be in full force and effect and may be executed according to law, and the time such person shall have been at large under

such suspended sentence shall not be counted as a part of the term of his sentence, but the time of the defendant's sentence shall count from the date of service of such bench warrant.

Under the plain language of the statutes, Harris was only entitled to credit for time served from the date of service of the bench warrants on his probation violations.

In its amended order, the district court found that the bench warrants were not actually served on Harris until November 9, 2011. (R., pp.184-85.) This finding is supported by the underlying record, which shows that the bench warrants were served on November 9, 2011. (Appendices A and B.) The district court gave Harris credit for time served from November 9, 2011, through his disposition hearing, in addition to other credit.⁴ (R., pp.186-88.) Therefore, Harris received all of the credit for time served to which he was entitled.

On appeal, Harris argues that the district court erred by analyzing his case under Idaho Code § 18-309 rather than Idaho Code § 19-2603. (Appellant's brief, pp.4-7.) The state agrees that Idaho Code § 19-2603 is the statute which governs credit for time served in regards to probation violations. However, any error committed by the district court by analyzing this case under Idaho Code § 18-309 is immaterial; the proper statute to apply to the case is an issue of law subject to free review. As shown above, application of the correct statute demonstrates that the district court awarded Harris all of the credit for time served to which he was entitled.

⁴ In its "Decision on Second Motion for Credit for Time Served," the district court erroneously stated that the record shows Harris was served with the bench warrants on November 11, 2011. (R., pp.95 n.3, 191 n.3.) In fact, the record shows that Harris was served with the bench warrants on November 9, 2011. The court's error is immaterial, however, as the court correctly calculated the credit for time served from November 9. (See R., pp.187-88.)

Harris also argues that he is entitled to an additional 256 days of credit for time served against each of his sentences because, “according to the undisputed record in this case,” his bench warrants were served “no later than February 25, 2011.” (Appellant’s brief, pp.6-7.) The “undisputed” nature of Harris’s facts is questionable where the record shows that he was served with the bench warrants on November 9, 2011 (Appendices A and B) and, consistent with that record, the district court specifically found that Harris was served with the warrants on November 9, 2011 (R., pp.184-85). In fact, *Harris* disputed whether he was served with the bench warrants on November 9. (Compare R., pp.35-36, 112-13 with 170-75.)

Below, Harris contended that he was entitled to credit for the time he served in Ada County because, he asserted, he was arrested on the bench warrants on February 24 and 25, 2011, respectively. (R., pp.42-43, 119-20, 170-75.) In support of his assertion, Harris included affidavits to which he attached his Ada County arrest history and booking sheets. (See R., pp.45-46, 122-23, 178-82.) These records do not show that Harris was actually served with the bench warrants. Rather, they only show that personnel at the Ada County jail were aware of the bench warrants and planned to transfer Harris back to Bannock County on resolution of his Ada County charges.

In CR-2009-14021-FE (though nowhere cited in his Appellant’s brief), Harris also attached a document which he purported was a served bench warrant. (Appendix C.) This document appears to be a faxed copy of the original bench warrant in that case. (Compare Appendix C with B.) It certifies that service occurred on February 25, 2011. (Appendix C.) This contradicts the original bench warrant contained in the district court’s file, which certifies that service was accomplished on November 9, 2011. (See

Appendix B.) At best, the faxed copy of the bench warrant presents conflicting evidence; it does not show that the court's finding, based on the original bench warrant, is clearly erroneous.

A district court's findings of fact are clearly erroneous only where they are unsupported by substantial evidence. Covert, 143 Idaho at 170, 139 P.3d at 772. Substantial evidence may exist even when there is conflicting evidence in the record. State v. Severson, 147 Idaho 649, 712, 215 P.3d 414, 432 (2009). Because the district court's factual findings are supported by substantial evidence they should be upheld, even in the face of Harris's conflicting evidence. And even if Harris's conflicting evidence were sufficient to undermine the district court's factual finding in regards to the date that the bench warrant was served in CR-2009-14021-FE, that would only grant Harris relief in that case; Harris failed to present any similar evidence that would call into question the district court's finding that the bench warrant in CR-2009-3447-FE was served on November 9, 2011.

Harris further asserted that he was being held on the Bannock County bench warrants while awaiting the resolution of his Ada County charges because he could not post bond in Ada County due to the no bond bench warrants from Bannock County. (R., pp.170-75.) As an initial matter, Harris has not established the relevance of this argument. The statute grants credit for time served in custody following the service of the bench warrant, not for custody the defendant claims he might have avoided but for the existence of the bench warrant. See I.C. § 19-2603.

Even if Harris's argument had some legal merit, it would still fail factually. In issues involving probation, the district court may make credibility determinations. See

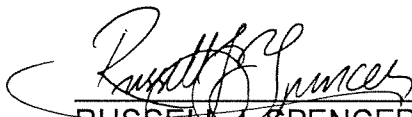
State v. Sanchez, 149 Idaho 102, 105, 233 P.3d 33, 36 (2009). The district court did not find Harris's contention—that the Bannock County bench warrants prevented him from posting bond in Ada County—credible. (R., pp.193-94.) As the district court noted, Harris was eligible to post bond on the charges in Ada County but chose not to. (Id.) This is especially true considering that Harris was arrested in Ada County on February 3, 2011, and no one became aware of the no bond bench warrants until three weeks later, on February 24 and 25, at the earliest. (R., pp.46, 123.) Harris was incarcerated in Ada County because of his charges in Ada County, not his pending probation violations in Bannock County.

The district court correctly awarded Harris all of the credit for time served to which he was entitled. Harris is requesting that this Court allow him to double count the time he spent in Ada County, awaiting the resolution of charges arising from Ada County, against his Bannock County sentences. Idaho Code § 19-2603 does not entitle him to double count that time. The district court correctly denied Harris's motion for additional credit for time served to which he was not entitled, and the district court's order should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Harris's motion for additional credit for time served, to which Harris was not entitled.

DATED this 7th day of October, 2014.




RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of October, 2014, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

ERIC D. FREDERICKSEN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



RUSSELL J. SPENCER
Deputy Attorney General

RJS/pm

APPENDIX A

FILED
BANNOCK COUNTY
CLERK OF DISTRICT COURT

BOND \$ No

D/N DcN

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

BY [Signature]
DEPUTY CLERK

ORIGINAL

STATE OF IDAHO,

Plaintiff,

vs.

TROY GORDON HARRIS,
[Redacted]

Defendant.

CASE NO. CR-2009-0003447-FE

BENCH WARRANT

TO: ANY SHERIFF, CONSTABLE, MARSHAL OR POLICEMAN OF THE STATE OF IDAHO:

TROY GORDON HARRIS, having been sentenced by the Honorable David C. Nye on June 1, 2009, and placed on probation to the Idaho Department of Corrections for a period of FOUR (4) years, subject to certain terms and conditions; and a report of violation having been filed with the Court alleging a violation of those terms and conditions;

THIS IS TO COMMAND YOU, the Sheriff of Bannock County, Idaho, or any peace officer of this State, to forthwith arrest the above-named defendant, TROY GORDON HARRIS, and bring the defendant before this Court, or if Court has adjourned, that you deliver the defendant into the custody of the Sheriff of Bannock County, Idaho.

DATED this 15th day of February, 2011.

[Signature]
DAVID C. NYE
Sixth District Judge

cc: Mark L. Hiedeman
Office of the Public Defender
Probation and Parole
Bannock County Sheriff Department
Bannock County Court Marshall Office

STATE OF IDAHO v TROY GORDON HARRIS

/s/ WILL EXTRADITE
/s/ WILL NOT EXTRADITE
/s/ IDAHO ONLY
/s/ WESTERN CONTINENTAL STATES
/s/ NATIONWIDE

MARK L. HIEDEMAN
BANNOCK COUNTY PROSECUTOR

BY [Signature]

BENCH WARRANT

STATE OF IDAHO)

COUNTY OF _____) ss

I HEREBY CERTIFY that I received the within
Warrant on the 9 day of NOVEMBER, 2011,
and served said Warrant on the within named defendant
on the 9 day of NOVEMBER, 2011.

HASKETT 2535
OFFICER

APPENDIX B

BANNOCK COUNTY
CLERK OF DISTRICT COURT

BOND \$ No D/N DeN

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

DEPUTY CLERK

STATE OF IDAHO,

Plaintiff,

vs.

TROY GORDON HARRIS,

Defendant.

ORIGINAL

CASE NO. CR-2009-0014021-FE

BENCH WARRANT

TO: ANY SHERIFF, CONSTABLE, MARSHAL OR POLICEMAN OF THE STATE OF IDAHO:

TROY GORDON HARRIS, having been sentenced by the Honorable David C. Nye on September 30, 2009, and placed on probation to the Idaho Department of Corrections for a period of FOUR (4) years, subject to certain terms and conditions; and a report of violation having been filed with the Court alleging a violation of those terms and conditions;

THIS IS TO COMMAND YOU, the Sheriff of Bannock County, Idaho, or any peace officer of this State, to forthwith arrest the above-named defendant, TROY GORDON HARRIS, and bring the defendant before this Court, or if Court has adjourned, that you deliver the defendant into the custody of the Sheriff of Bannock County, Idaho.

DATED this 5th day of February, 2011.

DAVID C. NYE
Sixth District Judge

cc: Mark L. Hiedeman
Office of the Public Defender
Probation and Parole
Bannock County Sheriff Department
Bannock County Court Marshall Office

STATE OF IDAHO v TROY GORDON HARRIS

____ WILL EXTRADITE
____ WILL NOT EXTRADITE
X IDAHO ONLY
____ WESTERN CONTINENTAL STATES
____ NATIONWIDE

MARK L. HIEDEMAN
BANNOCK COUNTY PROSECUTOR

BY

BENCH WARRANT

STATE OF IDAHO)
COUNTY OF _____) ss

I HEREBY CERTIFY that I received the within
Warrant on the 9 day of NOVEMBER, 2011,
and served said Warrant on the within named defendant
on the 9 day of NOVEMBER, 2011.

HASKETT 2535
OFFICER

APPENDIX C

BOND \$ NO D/N DonIN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**ORIGINAL**

STATE OF IDAHO,

Plaintiff,

vs.

TROY GORDON HARRIS,
518-94-5875
DOB: 6-28-1962

Defendant.

CASE NO. GR-2009-0014021-FE

BENCH WARRANT

TO: ANY SHERIFF, CONSTABLE, MARSHAL OR POLICEMAN OF THE STATE OF IDAHO:

TROY GORDON HARRIS, having been sentenced by the Honorable David C. Nye on September 30, 2009, and placed on probation to the Idaho Department of Corrections for a period of FOUR (4) years, subject to certain terms and conditions; and a report of violation having been filed with the Court alleging a violation of those terms and conditions;

THIS IS TO COMMAND YOU, the Sheriff of Bannock County, Idaho, or any peace officer of this State, to forthwith arrest the above-named defendant, TROY GORDON HARRIS, and bring the defendant before this Court, or if Court has adjourned, that you deliver the defendant into the custody of the Sheriff of Bannock County, Idaho.

DATED this 25 day of February, 2011.

 DAVID C. NYE
 Sixth District Judge

 cc: Mark L. Hiedeman
 Office of the Public Defender
 Probation and Parole
 Bannock County Sheriff Department
 Bannock County Court Marshall Office

STATE OF IDAHO v TROY GORDON HARRIS

 WILL EXTRADITE
 WILL NOT EXTRADITE
 IDAHO ONLY
 WESTERN CONTINENTAL STATES
 NATIONWIDE

 MARK L. HIEDEMAN
 BANNOCK COUNTY PROSECUTOR
BY 

BENCH WARRANT

STATE OF IDAHO

COUNTY OF Ada
 I HEREBY CERTIFY that I received the within
 Warrant on the 25 day of February, 2011
 and served said Warrant on the within named defendant
 on the 25 day of February, 2011.

Draper 4261
 OFFICER

 RECEIVED
 ADA COUNTY INMATE RECORDS

FEB 25 2011